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Paper No. .

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**SEP 02 2009**

**OFFICE OF PETITIONS**

In re Application of :  
Mohapatra et al. :  
Application No. 10/655,873 : LETTER REGARDING  
Filed: September 5, 2003 : PATENT TERM ADJUSTMENT  
Atty Docket No. USF.182XC1 :

This is a decision on the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT" filed March 20, 2009. Applicants agree with the initial determination of patent term adjustment under 35 U.S.C. 154(b) of zero (0) days. Pursuant to their duty of good faith and candor, applicants disclose that the entry of a period of adjustment for Office delay should be 25 days, not 118 days.

The request for review of patent term adjustment is **GRANTED to the extent indicated herein.**

The Office has updated the PALM screen to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is zero (0) days, including 371 days of applicant delay and 30 days of Office delay. A copy of the updated PALM screen, showing this determination, is enclosed.

On February 9, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On March 20, 2009, applicants timely submitted the instant comment.

The record supports a conclusion that the present application is not subject to a terminal disclaimer.

Applicants are correct that the period of adjustment of 118 days for Office delay is incorrect. Pursuant to 37 C.F.R. § 1.702(a),

Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

... (2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

On November 28, 2007, the Office mailed the Letter Regarding Deferral/Suspension of action under 37 CFR 1.103 in response to, and within four months of, applicants' filing of a reply including a request for continued examination (RCE), amendment after final and request for suspension on October 31, 2007. Thus, there was no examination delay within the meaning of § 1.702(a)(2). Accordingly, the period of adjustment of 118 days for Office delay in responding to the reply filed October 31, 2007 has been corrected to 0 days.

However, applicants are incorrect in their assertion of entitlement to 25 additional days for Office delay in not taking action within four months of the end of the suspension on January 31, 2008. As discussed above, and acknowledged by applicants, whether the Office failed to take action within the meaning of 1.702(a)(2) by delaying in responding to the reply under 35 U.S.C. 132 filed October 31, 2007 is properly calculated based on the Office action, namely the Letter Regarding Suspension, mailed November 28, 2007. 37 CFR 1.702(a)(2) does not provide for entering a further Office delay for taking action in response to the reply under 35 U.S.C. 132 filed October 31, 2007 after the end of the applicant requested suspension. Applicants do not cite any rule or statute that provides for entry of an additional 25 days based on failure to take action after the end of an applicant requested suspension.

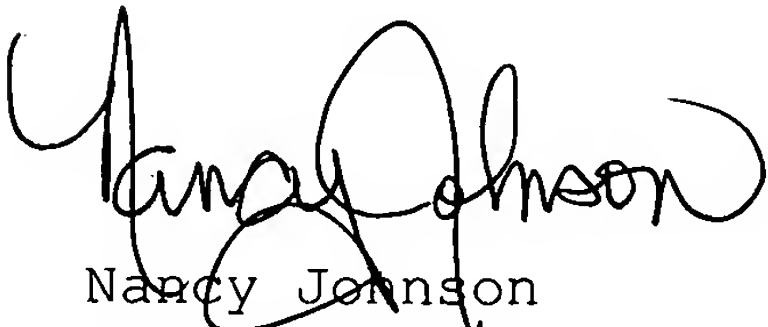
In view thereof, the determination of patent term adjustment at the time of the mailing of the Notice of Allowance remains zero (0) days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosed: Copy of REVISED PALM Screen

Day : Monday  
Date: 8/31/2009

# PALM INTRANET

Time: 20:48:52

## PTA Calculations for Application: 10/655873

Application Filing Date:	09/05/2003	PTO Delay (PTO):	148
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	371
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-118		

## File Contents History

Number	Date	Contents Description	PTO	APPL	START
120	08/31/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		118	
112	02/09/2009	MAIL NOTICE OF ALLOWANCE			
111	02/05/2009	ISSUE REVISION COMPLETED			
110	02/05/2009	DOCUMENT VERIFICATION			
109	02/05/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
108	02/05/2009	NOTICE OF ALLOWABILITY			
104	10/27/2008	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
103	11/26/2008	DATE FORWARDED TO EXAMINER			
102	10/27/2008	RESPONSE AFTER NON-FINAL ACTION		31	100
101	10/27/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
100	06/26/2008	MAIL NON-FINAL REJECTION	118		89
99	06/21/2008	NON-FINAL REJECTION			
97	06/08/2008	DATE FORWARDED TO EXAMINER			
96	06/08/2008	TO CLOSE THE A/R RECORD AND RESET THE STATUS FOR EXPIRED SUSPENSIONS.			
95	11/28/2007	MAIL LETTER SUSPENDING PROSECUTION AT APPLICANT'S REQUEST			
94	11/27/2007	LETTER OF SUSPENSION - APPLICANT INITIATED			
93	10/31/2007	LETTER REQUESTING SUSPENSION OF PROSECUTION			
92	11/27/2007	DATE FORWARDED TO EXAMINER			
91	10/31/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
90	11/27/2007	DATE FORWARDED TO EXAMINER			

89	10/31/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
88	11/27/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
87	10/31/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
86	09/20/2007	MAIL FINAL REJECTION (PTOL - 326)			
85	09/17/2007	FINAL REJECTION			
84	06/26/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
83	02/23/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
82	07/11/2007	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
81	07/09/2007	DATE FORWARDED TO EXAMINER			
80	07/05/2007	SUPPLEMENTAL RESPONSE		9	77
79	07/06/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
78	06/30/2007	DATE FORWARDED TO EXAMINER			
77	06/26/2007	RESPONSE AFTER NON-FINAL ACTION		31	70
76	06/26/2007	REFERENCE CAPTURE ON IDS			
75	06/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
74	06/26/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
73	06/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
72	06/12/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
71.7	02/23/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		102	64
71	02/23/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
70	02/26/2007	MAIL NON-FINAL REJECTION			
69	02/05/2007	NON-FINAL REJECTION			
68	11/13/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
67	11/28/2006	CASE DOCKETED TO EXAMINER IN GAU			
66.7	11/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
66	11/13/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

65	11/20/2006	DATE FORWARDED TO EXAMINER			
64	11/13/2006	RESPONSE AFTER NON-FINAL ACTION		69	57
63	11/13/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
59	11/15/2006	CASE DOCKETED TO EXAMINER IN GAU			
58	09/15/2006	CASE DOCKETED TO EXAMINER IN GAU			
57	06/05/2006	MAIL NON-FINAL REJECTION			
56	05/30/2006	NON-FINAL REJECTION			
55	05/05/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
54	04/20/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
53	05/05/2006	REFERENCE CAPTURE ON IDS			
52.7	05/05/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
52	05/05/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
51.7	04/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
51	04/20/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	04/26/2006	DATE FORWARDED TO EXAMINER			
49	04/20/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
48	04/20/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
47	04/26/2006	DATE FORWARDED TO EXAMINER			
46	04/20/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)		36	39
45	04/26/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
44	04/20/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
40	04/20/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
39	12/15/2005	MAIL FINAL REJECTION (PTOL - 326)	30		33
38	12/12/2005	FINAL REJECTION			
35.7	07/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	33
35	07/15/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	07/22/2005	DATE FORWARDED TO EXAMINER			



33	07/15/2005	RESPONSE AFTER NON-FINAL ACTION		93	31
32	07/15/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
31	01/13/2005	MAIL NON-FINAL REJECTION			
30	01/10/2005	NON-FINAL REJECTION			
29	12/02/2004	DATE FORWARDED TO EXAMINER			
28	11/19/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
27	11/19/2004	WORKFLOW INCOMING AMENDMENT IFW			
26	10/21/2004	MAIL RESTRICTION REQUIREMENT			
25	10/15/2004	CORRESPONDENCE ADDRESS CHANGE			
24	10/01/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
23	06/10/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
22	06/10/2004	CASE DOCKETED TO EXAMINER IN GAU			
21	05/25/2004	REFERENCE CAPTURE ON IDS			
20.7	04/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	04/26/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19.7	02/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	02/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	03/31/2004	APPLICATION RETURN FROM OIPE			
17	03/31/2004	APPLICATION RETURN TO OIPE			
16	03/30/2004	APPLICATION RETURN FROM OIPE			
15	03/31/2004	APPLICATION IS NOW COMPLETE			
14	03/30/2004	APPLICATION RETURN TO OIPE			
13	03/30/2004	APPLICATION DISPATCHED FROM OIPE			
12	03/30/2004	APPLICATION IS NOW COMPLETE			
11	03/05/2004	ADDITIONAL APPLICATION FILING FEES			
10	03/05/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
9	01/21/2004	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
8	09/05/2003	PGPUBS NONPUB REQUEST			
6	11/19/2003	CASE CLASSIFIED BY OIPE			
5	11/19/2003	CLEARED BY OIPE CSR			
4	10/11/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			

3	09/17/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	09/05/2003	CRF DISK HAS BEEN RECEIVED BY PREEEXAM / GROUP / PCT			
1	09/05/2003	INITIAL EXAM TEAM NN			

**Search Another: Application#**

**Search**

**EXPLANATION OF PTA CALCULATION**

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To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to [OASIS](#) | Home page